IN THE INDUSTRIAL RELATIONS COURT

SITTING AT ZOMBA

IRC MATTER NO. ZA 158 OF 2025

BETWEEN:

KAJULI KAITANO & 9 OTHERS ………………………………………… **APPLICANTS**

AND

ELECTRICITY SUPPLY CORPORATION OF MALAWI LIMITED

(ESCOM)………………………………………………………………… **RESPONDENT**

CORAM:

HON. PETER M. E. KANDULU, DEPUTY CHAIRPERSON

Precious Dzikawanda, Counsel for the Applicants

Panji Chirwa, Counsel for the Respondent

Mr. Kakhobwe, Court Clerk

RULING ON APPLICATION FOR DISPOSAL OF CASE ON POINT OF LAW

Introduction

This is an application by the Applicants requesting that this Court dispose of part of these proceedings against the Respondent on points of law by determining the following specific questions:

1. Whether judgment on liability for shortfall on overtime pay should be entered for the Applicants for the period between January 2018 to March 2024 on the same terms as in the matters of ***ESCOM Limited v. Joshua Mwamukonda & 57 Others*** (Miscellaneous Application No. 3 of 2026), ***Davie Katekesa & 1298 Others v. ESCOM Limited*** (IRC Matter No. 111 of 2026), and ***Yohane Malapa & 2525 Others v. ESCOM Limited*** (IRC Matter No. 363 of 2026)?

2. Whether the Applicants are entitled to compensation for unfair labour practices on the same terms as the Applicants in the aforementioned matters?

Applicants' Case

The Applicants' position, as set out in their sworn evidence and submissions, is that they are current and former employees of the Respondent who served in various positions across different locations within the jurisdiction between January 2005 and March 2024. During their employment, they performed work beyond normal working hours entitling them to overtime pay. However, the Respondent applied a calculation formula different from that prescribed under the Employment Act, resulting in a systemic underpayment of overtime pay.

The Applicants highlight that other employee previously instituted proceedings against the Respondent in ***Joshua Mwamukonda & 57 Others v. ESCOM Limited*** (IRC Matter No. 72 of 2024), where overtime underpayments and compensation for unfair labour practices were assessed. On appeal in ***ESCOM Limited v. Joshua Mwamukonda & 57 Others*** (Miscellaneous Application No. 3 of 2026), the matter was settled by a Consent Order under which the Respondent agreed to pay the underpaid overtime for the period from January 2018 to March 2024, along with compensation for unfair labour practices amounting to MK4,000,000.00 for each applicant.

Similarly, in ***Davie Katekesa & 1298 Others v. ESCOM Limited*** (IRC Matter No. 111 of 2026) and ***Yohane Malapa & 2525 Others v. ESCOM Limited*** (IRC Matter No. 363 of 2026), which arose from identical factual foundations, Consent Orders were executed under matching terms: payment of withheld overtime for January 2018 to March 2024 and MK4,000,000.00 per applicant as compensation for unfair labour practices.

The Applicants state that prior to this application, out-of-court engagements took place where the Respondent disclosed pay slips and verified calculations, establishing the total underpaid overtime for these Applicants to be MK 96,582,252.96. The Applicants contend that it is fair, just, and in accordance with law that they be treated equally and that this matter be determined on points of law.

Respondent's Opposition

The Respondent opposes the Motion on several grounds:

1. The Applicants filed these proceedings on 29th October 2025 claiming contractual entitlements spanning nearly 19 years (2005–2024).

2. The Respondent argues that the *Mwamukonda* matter did not establish a binding precedent on liability because it proceeded on a procedural default, specifically, the striking out of the Respondent's defence (IRC Form 2) for non-compliance with a court order to produce employment records, leading directly to an assessment of damages. The subsequent Consent Orders in *Katekesa* and *Malapa* were negotiated settlements rather than judicial determinations on the merits.

3. The Respondent asserts that liability cannot be determined on a point of law without strict individual proof regarding specific dates worked, hours, authorized overtime, past payments, and employment status. These factual elements, which the Respondent denies in its IRC Form 2, are foundational to establishing liability rather than mere quantification during assessment.

4. The Respondent pleads that claims arising prior to 29th September 2019 are statute-barred under Section 4(1)(a) of the Limitation Act, which imposes a 6-year limitation period for actions founded on contract. The Respondent contends that each underpayment gives rise to a separate cause of action and no statutory exceptions (such as formal acknowledgment or fraud) have been properly pleaded by the Applicants.

Issues for Determination

1. Whether this matter is suitable for disposal on a point of law under Section 67 of the Labour Relations Act?
2. Whether judgment on liability for the shortfall on overtime pay should be entered for the Applicants for the period between January 2018 to March 2024 on the same terms as the precedent ESCOM matters?
3. Whether the Applicants are entitled to compensation for unfair labour practices in the sum of MK4,000,000.00 each on the same terms as the precedent ESCOM matters?

Applicable Law, Analysis and Decision

A. Suitability for Disposal on a Point of Law

Section 67(1) of the Labour Relations Act (as amended in 2021) dictates that matters before the Industrial Relations Court shall be heard and disposed of by the Chairperson or a Deputy Chairperson, with Section 67(2) explicitly providing that the Court shall determine matters of law and fact.

In ***Charles Nsaliwa v. Malawi Communications Regulatory Authority*** (Civil Appeal No. 30 of 2015), Chirwa J established the test for determining whether a matter is suitable for summary disposal on a point of law:

> *"Now, the test of whether the question of law or construction is 'suitable' to be determined without a full trial of the action is whether all the necessary and material facts relating to the subject matter of the question have been duly proved or admitted, and this postulates that there is no dispute or no further dispute as to the relevant facts at the time when the Court proceeds to determine the question... It may also be worth mentioning that the*

> *question of law or construction which is suitable for determination without a full trial must also have the potential that its determination will finally determine the entire cause or matter or any claim or issue therein as for example, the issue of liability, leaving the question of damages and interest therein to be assessed subject only to any possible appeal."*

This principle aligns with international jurisprudence. In ***Carter (R.G.) Ltd v. Clarke*** [1990] 1 WLR 578, Lord Donaldson MR held that where there are no triable issues of fact, it is proper for the court to resolve the legal questions directly to avoid unnecessary delay. Similarly, in ***Tokio Investment Pte Ltd v. Tan Chor Thing*** [1993] 3 SLR 170, the Singapore Court of Appeal stressed that where legal issues finally determine the rights of parties, holding a full trial serves no purpose and causes unwarranted delay.

In the present case, the foundational facts giving rise to liability are identical to those previously before this Court and the High Court in *Mwamukonda*, *Katekesa*, and *Malapa*. The core factual backdrop, that the Respondent systematically deployed an illegal formula for computing overtime pay contrary to statutory requirements is undisputed in substance. Furthermore, the figures for the period between January 2018 and March 2024 were extracted directly from pay slips provided by the Respondent itself and verified prior to the drafting of the consent order. Consequently, there remains no genuine dispute of material fact regarding the underlying liability for that period.

Application of Issue Estoppel and Equal Treatment

The doctrine of issue estoppel prevents a party from re-litigating an issue that has already been adjudicated or conclusively resolved in prior proceedings involving the same subject matter. In ***McIlkenny v. Chief Constable of the West Midlands*** [1980] 2 All ER 227, Lord Denning MR observed:

> *"Likewise, it seems to me that a previous decision in a civil case against a man operates as an estoppel preventing him from challenging it in subsequent proceedings unless he can show that it was obtained by fraud or collusion... If the lorry driver (with the backing of his employer) has had a full and fair opportunity of contesting the issue of negligence in the first action, he should be estopped from disputing it in the second action."*

This approach was adopted in Malawian jurisprudence by Tembo J in ***Darlington Juma v. Fyson Magalasi and Britam Insurance Company Limited*** (Personal Injury Cause No. 645 of 2021), where issue estoppel was applied against defendants based on findings in an earlier proceeding arising out of the same set of facts.

As stated by Lord Upjohn in ***Carl-Zeiss-Stiftung v. Rayner and Keeler Ltd*** *(No 2)* [1966] 2 All ER 536, estoppel *"must be applied so as to work justice and not injustice."*

The Respondent was a primary party in ***ESCOM Limited v. Joshua Mwamukonda & 57 Others*** (Miscellaneous Application No. 3 of 2026), ***Davie Katekesa & 1298 Others v. ESCOM Limited*** (IRC Matter No. 111 of 2026), and ***Yohane Malapa & 2525 Others v. ESCOM Limited*** (IRC Matter No. 363 of 2026). In all these matters, the Respondent conceded to paying the underpaid overtime for the period from January 2018 to March 2024 and agreed to a standardized compensation of MK4,000,000.00 per employee for unfair labour practices.

To allow the Respondent to re-open the question of liability or force another group of employees standing in identical circumstances through full trial would perpetuate unfair labour practices and create arbitrariness in judicial outcomes. Justice and equity demand that the present Applicants be accorded equal treatment under the law.

Conclusion and Orders

Having satisfied myself that there are no unresolved issues of fact regarding liability for the period from January 2018 to March 2024, and that this matter is suitable for disposal on points of law, judgment is hereby entered in favour of the Applicants as follows:

1. **Liability and Overtime Shortfall**

Judgment on liability for the shortfall on overtime pay is hereby entered in favour of the Applicants for the period between January 2018 and March 2024. The Respondent is ordered to pay the Applicants the sum of **MK 96,582,252.96**, representing the verified and underpaid overtime pay for the said period.

2. **Compensation for Unfair Labour Practices**

Judgment is entered in favour of the Applicants for compensation for unfair labour practices. The Respondent shall pay each of the 10 Applicants the sum of **MK 4,000,000.00**, amounting to a total sum of **MK 40,000,000.00**.

The Respondent is ordered to pay to the Applicants within a period of 15 days from the date of the delivery of the judgment

Any party aggrieved by this decision on the disposal of the matter on points of law retains the right to appeal to the High Court of Malawi within the prescribed statutory period.

DELIVERED IN CHAMBERS this 7th day of August 2026 at Zomba, Malawi.

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON